IN THE HIGH COURT OF JUDICATURE AT BOMBAY

TESTAMENTARY AND INTESTATE JURISDICTION

MISCELLANEOUS PETITION NO.71 OF 2005

IN

PETITION NO.817 OF 2002

Mr.Vishwanath Anand. ...Petitioner.

vs.

Mrs.Urvashi Kanaiyalal Popat & Another. ...Respondents.

Mr.S.V.Rajeshwar i/b. M/s.Lega Apex, for Petitioner.

Mr.M.S.Upadhyay, for Respondent no.1.

Ms.Savitha Kansa, for Respondent no.2.

CORAM: D.K.DESHMUKH,J.

DATED: 7th July, 2006.

P.C.:-

1. This petition has been taken out for addition of the petitioner as executor in the probate that has been granted by this Court. The Will of which the probate has been granted appointing two persons as executors. The respondent no.1 had applied for probate of the Will. The applicant who was also the executor has given his consent. After the probate was obtained, both the executors have applied to the Society/Respondent no.2 for showing names

of both the executors in the Share certificate of the flat, but the Society declined to do so and asked the applicant to get the probate amended. It is clear that there is no necessity of amendment in the probate because the probate is granted of the Will. Admittedly copy of the Will was submitted to the Society, therefore, the respondent no.2 Society knew that the applicant was also an executor. The respondent no.1, who was the other executor, has never objected to the share certificate being transferred in the joint names of both the executors. Still the society without any valid reason drove the applicant to file this petition for amendment of the probate. The learned Counsel appearing for Respondent no.2 Society submitted that in the absence of probate, the Society could not have known the identity of the applicant. In my opinion, the submission is devoid of any substance. If the respondent no.2-Society had any doubt about the identity of the applicant, it could have asked the applicant to produce his passport, ration card etc. to establish his identity. It was absolutely unnecessary to drive the applicant to file this petition. In any case as there is no objection raised by the respondent no.1, the petition is granted in terms of prayer clause (b). However, the respondent no.2 Society who unnecessarily drove the applicant to file this petition, is directed to pay to the applicant as and by way of cost Rs.25,000/-.

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